

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 3599 OF 2005  
IN  
APPEAL (LODG.) NO. 1248 OF 2005  
IN  
COMPANY APPLICATION NO. 430 OF 2000  
IN  
COMPANY PETITION NO. 298 OF 1994

Maharashtra State Financial Corporation] .. Appellant  
(Ori.Res.No.2)

Versus

M/s.Jaykora Synthetics P.L. & Ors. ] .. Respondents  
(Ori.Res.1 to 4)

Mr. M.P. Rege i/b M/s. M.P. Rege & Co. for the  
appellant.

Mr. V.A. Thorat with Mr. Prabhanjan Gurjar for P.S.  
Jani.

Mr. A.B. Shinde for respondent No.3.

Mr. Paresh C. Mankad i/b Pravin D. Kadam for  
respondent No.4

Mr. Kamal Katha i/b Thakordas Mandsavkar for respondent  
No.2.

**CORAM: R.M. LODHA &  
ANOOP V. MOHTA, JJ.**

**DATED: 03RD FEBRUARY, 2006**

**P.C. :**

. Maharashtra State Financial Corporation (MSFC)  
have filed Appeal against the order dated 3rd May, 2002  
passed by the learned Company Judge. The Appeal suffers

from delay of 1264 days. The cause shown by the appellant for condonation of delay is that on receipt of the amended copy of the Company Application in the month of September 2001, MSFC entrusted the matter to one of its Panel Advocates, Advocate Mr. Prakash S. Jani to represent and protect their interest. Advocate Jani, on account of his personal difficulty, was not keeping proper track of the matter and did not appear before the Court at the time of hearing of the Company Application. They were not informed about the order dated 3rd May, 2002. According to MSFC they came to know of the order dated 3rd May, 2002 on 25th July, 2005 when the respondent No.1 moved the report and thereafter, steps were taken for filing the Appeal.

2. Since in the Affidavit of support of the Notice of Motion allegations of carelessness and negligence were made against Mr. Prakash S. Jani, Advocate, by the order dated 9th January, 2006, we issued notice to the Advocate Prakash S. Jani. He has filed his Affidavit. From his Affidavit, it appears that there was no relief sought against MSFC in the Company Application. He stated that he did not recollect as to why he did not appear on 3rd May, 2002, but he stated that had he been informed, he would have definitely appeared in support of the Company

Application. He has further stated that from the month of March/April 2003, due to his wife's illness, he was precluded from continuing practice for about two years and that all the files of MSFC were returned.

3. It thus appears from the Affidavit of Mr. Prakash S. Jani that he did not appear on 3rd May, 2002 for the reasons he did not recollect, but surely he would have appeared if informed of the matter. In the present case, we find that it is not the negligence of the Advocate, but the negligence of the appellant and its officials that resulted in gross delay. Though the amended Company Application was served upon the MSFC in the month of September, 2001 at no point of time any officer or official of the MSFC seems to have cared to find out the stage of litigation in the Company Application. Even when the files were returned by Mr. Prakash S. Jani, no efforts were made by MSFC or its officers in finding out the status of the Company Application. We are afraid, gross delay of almost four years is not sufficiently explained in the Affidavit in support of the Notice of Motion.

4. Consequently, we dismiss the Notice of Motion.

Sd/-

[R.M. LODHA, J.]

Sd/-  
[ANOOB V. MOHTA, J.]